IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 387 of 2004

Air India Limited .. Petitioner

versus

Indian Pilots Guild & ors. .. Respondents

...

Mr.S.K. Talsania with J. Saluja i/b M.V. Kini & Co. for the petitioner.

Mr.Mohan Bir Singh for the respondent nos.1 to 3.

CORAM : D.G. KARNIK, J

DATED : 7th June 2006.

P.C.:

1. By this petition, the petitioner challenges the order dated 22nd January 2004 (wrongly mentioned as 22nd February 2004 in the copy) passed by National Industrial Tribunal (for short 'the Tribunal')

rejecting the petitioner's application for permission to cross-examine the witness of the respondent no.1. (for short 'the respondent').

2. The respondent, a trade union of the pilots, filed an application under section 33-A of the Industrial Disputes Act for certain reliefs against the petitioner on 22nd October 2003. Therein, the respondent made an application for interim relief pending the final disposal of the application. The petitioner appeared and opposed the application for interim relief. It also filed the written statement to the main application. The respondent no.2, the General Secretary of respondent no.1, filed an affidavit in support of the application for interim relief on 18th November 2003 and the matter was adjourned to 20th November 2003 for hearing on application for interim relief. Counsel for the respondent no.1 commenced his arguments on 20th November 2003 which remained unconcluded. The matter was then adjourned from time to time and was posted for further hearing of the application for interim relief on 12th January 2004.

3. In the mean while, a Division Bench of this

Court in MRF Ltd, Goa Vs. Goa MRF Employees Union reported in 2003 II CLR 985 held that an Industrial Tribunal hearing an application under section 33-A of the Industrial Disputes Act had no jurisdiction to grant any interim relief. In view of this decision, which by the time had become known, advocate for the respondent no.1 orally stated that he did not wish to press the application for interim relief. Thereupon, the matter should have normally been adjourned either for framing of the issues. It appears that only on the statement made on the advocate for the respondent that it was not pressing the application for interim relief that the Tribunal chose to alter the stage from "hearing of an interim application" (which was part heard) to the "final hearing of the main petition" and asked the advocate for the petitioner whether he wished to cross-examine the applicant. It appears that no formal order was passed that the affidavit which was filed by the witness of respondent in support of the application for interim injunction should be treated as evidence or examination-in-chief for the purpose of the main petition. Advocate for the petitioner who perhaps was not prepared for the hearing of the main petition and was unaware that the respondent’s advocate would

not press the application for interim relief and press for final hearing, on the spur of the moment stated that he did not wish to cross-examine the witness of the respondent. Thereupon, the Tribunal appears to have immediately called upon the advocate for the respondent to commence his arguments forthwith. The arguments were commenced but remained unconcluded and the matter was adjourned to 22nd January 2004 for further haring. Realising the mistake made in wrongly stating that he did not wish to cross examine the witness of respondent, the advocate for the petitioner, before the next date moved the Tribunal on 19th January 2004 for permission to cross-examine the witness of the respondent. The application was heard on due date i.e. 22nd January 2004 and was rejected. That order is impugned in this petition.

4. Learned counsel for the petitioner fairly admitted that it was an error on the part of the advocate for the petitioner to state that the petitioner did not wish to cross-examine the respondent’s witness. He however submitted that statement was made without instructions and without consulting the petitioner. He invited my attention

to the peculiar facts of the case viz. on 12th January 2004 when the statement was made, the matter was not fixed for hearing of the main petition. The matter was fixed only for hearing on the application for interim relief and in fact the hearing had commenced earlier and was part-heard. The advocate was therefore prepared only for hearing of the application for interim relief. In that regard, he was relying upon the judgement of the Division Bench of this Court in MRF Ltd Goa Vs. MRF Employees Union (Supra). When the learned advocate for the respondent did not press the application for interim relief, the Tribunal ought to have adjourned the matter for framing of issues or hearing without issues, if it so thought fit. The Tribunal had not framed the issues and had not indicated earlier that the matter would be heard finally without framing issues. The advocate was thus taken completely by surprise when a question was put to him, whether he wished to cross-examine the respondent's witness and erroneously declined to exercise the right of cross-examination. The petitioner should not be punished for this error which happened inadvertently. Learned counsel further submitted that in any event, before the next date, the error was corrected and an

application was moved for permission to cross examine the witness and the permission ought to have been granted.

5. Learned counsel for the respondent submitted that the advocate for the petitioner not only did not exercise the right of cross examination but also allowed the matter hearing to proceed further and allowed the respondent's advocate to commence his arguments. He submitted that hands of the clock cannot be set back and now no permission can be granted for cross examination of the witness of the respondent no.1. It is true that ordinarily hands of the clock cannot be set back. Ordinarily if an advocate declines to cross examine a witness, a Court or a Tribunal is entitled to proceed further. However in the present case, if the Tribunal ought to have further asked a question to the advocate whether petitioner herein (the respondent before the Tribunal wanted to adduce any evidence in support of its defence. This does not appear to have been done. There is no recital in the roznama to that effect. Thus, the petitioner was denied an opportunity to adduce its positive evidence merely because it

declined to exercise its right to cross examine the respondent's witness.

6. Section 11 of the Industrial Disputes Act provides that an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or the other concerned authority may think fit. Rigorous provisions of the Code of Civil Procedure governing the procedure and the order of the leading of the evidence are not strictly applicable to an enquiry before the Tribunal. Though the broader principles of Code of Civil Procedure may be followed, the Tribunal is essentially governed by the principles of natural justice. Rule 15 of the Industrial Disputes (Central) Rules 1957 provides that a Board, Court, Labour Court, Tribunal or National Tribunal or an arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit. The Tribunal has a power to receive evidence at any stage of the proceedings. Though ordinarily after the arguments are commenced, the Tribunal would not receive any further evidence, it is not prohibited from doing so in exceptional cases if the circumstance so require.

The present case, in my view, is an exceptional case where this power should have been exercised by the Tribunal. In the present case, by denying an opportunity of cross examination and by further denying an opportunity of adducing its evidence to the petitioner. Great injustice has been caused to the petitioner. This is especially so when the petitioner had no notice that the matter would be taken up for hearing of the main petition which was only posted for hearing of an application for interim relief. The prejudice that is likely to be caused by granting permission to the petitioner to cross-examine, the witness of the respondent no.1 can be compensated by awarding sufficient costs, which are quantified at Rs.5,000/-.

7. For these reasons, petition is allowed. The impugned order is set aside and application made by the petitioner for permission to cross-examine the witness of respondent no.1 stands allowed. The Tribunal shall permit the petitioner to cross-examine the witness of respondent no.1 who has filed the affidavit. The respondent would be free to file further affidavits, if any, of its other witness who can be cross-examined by the petitioner. Thereafter,

the petitioner shall be permitted to adduce its evidence with an opportunity to the respondents to cross-examine them. The petitioner shall pay costs of Rs.5,000/- to the respondent.

(D.G. KARNIK, J)